

OGC Has Reviewed

LMH
30 Nov 1950

Deputy Executive

Legal Staff

Delegation and Redelelegation of Authority

1. In connection with the proposed delegations of authority by the Director of Central Intelligence, the Legal Staff has reviewed several decisions of the Comptroller General regarding the possibility of redelegation.

2. The decisions clearly indicate the Comptroller General's opposition to redelegation of most powers delegated in the proposed draft. It is our view that he would approve redelegation in only the following two instances:

a. The power to authorize execution of contracts (Paragraph A, Section 10 of proposed draft). There are, of course, certain instances when even delegation of procurement authority is not permitted. (For example, Section 3 of Public Law 110).

b. The authorities given to the Chief of a Mission or independent station outside the continental limits of the United States, insofar as authorization is given to designate an officer or employee to perform certain acts. (Paragraph G of proposed draft).

3. Prior to passage of the Administrative Expense Statute of 1946 (Public Law 600, 79th Congress), the Comptroller General on several occasions expressed his opposition to delegation of authority vested in the head of an agency. Public Law 600 specifically authorized delegation of such authority, but the Comptroller General remained firm in his opposition to redelegation. This opposition has been expressed both in decisions of the Comptroller General and in GAO regulations.

4. However, it is possible that the Comptroller General is now taking a more liberal attitude toward redelegation as a result of the reorganization plans recently enacted by Congress. For example, on 22 March 1950, the Comptroller General informed the Secretary of Commerce that the latter was not permitted to delegate to subordinates, the authority to designate employees to administer oaths under the provisions of 5 U.S.C. 16a. Then, Congress passed Reorganization Plan No. 5, which contained the following proviso:

"The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee,

of the Department of Commerce of any function of the Secretary"

As a result of the above, the Comptroller General reversed his previous decision and concluded that the Secretary of Commerce now would be authorized to delegate to subordinates the authority to designate employees to administer oaths under the act set out in 5 U.S.C. 13a. (Decision B-91896, dated 27 June 1950).

5. The Central Intelligence Agency, of course, has no such proviso in its basic legislation, and consequently cannot take full advantage of this decision. However, the recent decision does indicate the Comptroller General's recognition of the current legislative trend toward more liberal delegation of authority.

6. Conclusion. In view of the above, it would seem legally sound to utilize this phrase in the proposed draft: "The powers delegated herein may be exercised by the Deputies of designated officials, and may be redelegated where appropriate." In addition, in order to forestall any objection on the part of the Comptroller General, we believe the proposed draft should specify the positions to which delegations are made, rather than authorize redelegations to certain "designees in writing."

LAWRENCE B. HOUSTON
General Counsel

25X1A

cc: Subject
Chrono

Copy sent to D-12, 14 February 1952